

HOUSE BILL 3469  
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14 and Title 47, Chapter 18, Part 25, relative to regulating unsolicited e-mail and to enact the "Anti-Spam Act of 2004".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Anti-Spam Act of 2004".

SECTION 2. Tennessee Code Annotated, Title 47, Chapter 18, Part 25, is amended by deleting such part in its entirety.

SECTION 3. Tennessee Code Annotated, Section 39-14-601, is amended by deleting subdivisions (10) and (14) in their entirety and by renumbering the remaining items accordingly.

SECTION 4. Tennessee Code Annotated, Section 39-14-603, is amended by deleting such section in its entirety.

SECTION 5. Tennessee Code Annotated, Section 39-14-604, is amended by deleting subsections (b) and (c) in their entirety and by redesignating the remaining subsections accordingly.

SECTION 6. Tennessee Code Annotated, Section 39-14-606, is amended by deleting such section in its entirety.

SECTION 7. As used in this act, unless the context otherwise requires:

(1) "Affirmative consent," when used with respect to a commercial electronic mail message, means that:

(A) The recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

(B) If the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and

conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) "Authority" means the Tennessee regulatory authority created by § 65-1-201.

(3) "Commercial electronic mail message" means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose). "Commercial electronic mail message" does not include a transactional or relationship message. The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this part if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(4) "Domain name" means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) "Electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part") and a reference to an Internet domain (commonly referred to as the "domain part"), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) "Electronic mail message" means a message sent to a unique electronic mail address.

(7) "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(8) "Initiate", when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this item, more than one (1) person may be considered to have initiated a message.

(9) "Internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. Such term does not include telecommunications services.

(10) "Loss" means any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

(11) "Materially," with respect to false or misleading header information in a message, means the alteration or concealment of header information in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this act, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

(12) "Multiple" means more than one hundred (100) electronic mail messages during a twenty-four-hour period, more than one thousand (1,000) electronic mail messages during a thirty-day period, or more than ten thousand (10,000) electronic mail messages during a one-year period.

(13) "Procure", when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one's behalf.

(14) "Protected computer" means that which is used in intrastate or interstate commerce or communication, including a computer located outside the state that is used in a manner that affects intrastate or interstate commerce or communication.

(15) "Recipient", when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one (1) or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(16) "Routine conveyance" means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(17) "Sender," when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet website is advertised or promoted by the message; provided, however, if an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this act.

(18) "Sexually oriented material" means any material that depicts sexually explicit conduct unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(19) "Tennessee regulatory authority" means the authority created by § 65-1-201.

(20) "Transactional or relationship message" means an electronic mail message the primary purpose of which is:

(A) To facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

(B) To provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

(C) To provide any of the following with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender:

(i) Notification concerning a change in the terms or features;

(ii) Notification of a change in the recipient's standing or status; or

(iii) At regular periodic intervals, account balance information or other type of account statement;

(D) To provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

(E) To deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

The Tennessee regulatory authority, by regulation pursuant to Section 15, may modify this definition to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this act to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this act.

## SECTION 8.

(a) It is an offense for a person, in or affecting intrastate or interstate commerce, to knowingly engage in the following conduct or conspire to engage in the following conduct:

(1) Access a protected computer without authorization, and intentionally initiate the transmission of multiple commercial electronic mail messages from or through such computer;

(2) Use a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages;

(3) Materially falsify header information in multiple commercial electronic mail messages and intentionally initiate the transmission of such messages;

(4) Register, using information that materially falsifies the identity of the actual registrant, for five (5) or more electronic mail accounts or online user accounts or two (2) or more domain names, and intentionally initiate the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names; or

(5) Falsely represent oneself to be the registrant or the legitimate successor in interest to the registrant of five (5) or more Internet addresses, and intentionally initiate the transmission of multiple commercial electronic mail messages from such addresses.

(b) A violation of subsection (a) is:

(1) A Class D felony, punishable by a fine and/or imprisonment for not more than five (5) years if:

(A) The offense is committed in furtherance of any felony under the laws of this state; or

(B) The defendant has previously been convicted under this section or under § 39-14-602, or under the law of any state for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

(2) A Class E felony, punishable by a fine and/or imprisonment for not more than three (3) years if:

(A) The offense is an offense under subsection (a)(1);

(B) The offense is an offense under subsection (a)(4) and involved twenty (20) or more falsified electronic mail or online user account registrations, or ten (10) or more falsified domain name registrations;

(C) The volume of electronic mail messages transmitted in furtherance of the offense exceeded two thousand five hundred (2,500) during any twenty-four-hour period, twenty-five thousand (25,000) during any thirty-day period, or two hundred fifty thousand (250,000) during any one-year period;

(D) The offense caused loss to one (1) or more persons aggregating five thousand dollars (\$5,000) or more in value during any one-year period;

(E) As a result of the offense any individual committing the offense obtained anything of value aggregating five thousand dollars (\$5,000) or more during any one-year period; or

(F) The offense was undertaken by the defendant in concert with three (3) or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

(3) A Class A misdemeanor punishable by fine and/or imprisonment in any other case.

(c)

(1) The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the state:

(A) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

(B) Any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

(2) The procedures set forth in title 39, chapter 11, part 7 shall apply to criminal forfeiture proceeding under this subsection.

## SECTION 9.

(a) It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this section:

(1) Header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;

(2) A "from" line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(3) Header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.

(b) It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message.

(c)

(1) It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that:



(A) A recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(B) Remains capable of receiving such messages or communications for no less than thirty (30) days after the transmission of the original message.

(2) The person initiating a commercial electronic mail message may comply with subdivision (1)(A) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.

(3) A return electronic mail address or other mechanism does not fail to satisfy the requirements of subdivision (1)(A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.

(d)

(1) If a recipient makes a request using a mechanism provided pursuant to subsection (c) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful:

(A) For the sender to initiate the transmission to the recipient, more than ten (10) business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(B) For any person acting on behalf of the sender to initiate the transmission to the recipient, more than ten (10) business days after the

receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(C) For any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate subdivision (A) or (B); or

(D) For the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this act or other provision of law.

(2) A prohibition in subdivision (1) does not apply if there is affirmative consent by the recipient subsequent to the request under subdivision (1).

(e)

(1) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides:

(A) Clear and conspicuous identification that the message is an advertisement or solicitation;

(B) Clear and conspicuous notice of the opportunity under subsection (c) to decline to receive further commercial electronic mail messages from the sender; and

(C) A valid physical postal address of the sender.

(2) Subdivision (1)(A) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(f)

(1) It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsections (a), (b), (c), (d), or (e), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that:

(A) The electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or

(B) The electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(2) Nothing in this subsection creates an ownership or proprietary interest in such electronic mail addresses.

(g) It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsections (a), (b), (c), (d), or (e).

(h) It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(i)

(1) It is unlawful, and, if done knowingly, it is an offense, to initiate in or affecting intrastate or interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and:

(A) Fail to include in the subject heading for the electronic mail message the marks or notices prescribed by the Tennessee regulatory authority under this subsection; or

(B) Fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only:

(i) To the extent required or authorized pursuant to subdivision (2), any such marks or notices;

(ii) The information required to be included in the message pursuant to subsection (e); and

(iii) Instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) Subdivision (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(3) Not later than one hundred twenty (120) days after the effective date of this act, the authority, in consultation with the attorney general and reporter, shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of

such electronic mail. The authority shall publish and provide notice to the public of the marks or notices prescribed under this subdivision.

(j) A knowing violation of subsection (i) is a Class D felony punishable by fine and/or imprisonment of not more than five (5) years.

#### SECTION 10.

(a) It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of Section 9(a) if that person:

(1) Knows, or should have known in the ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) Received or expected to receive an economic benefit from such promotion; and

(3) Took no reasonable action:

(A) To prevent the transmission; or

(B) To detect the transmission and report it to the authority.

(b)

(1) Except as provided in subdivision (2), a person (hereinafter referred to as the "third party") that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party:

(A) Owns, or has a greater than fifty percent (50%) ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)

(i) Has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of Section 9(a); and

(ii) Receives, or expects to receive, an economic benefit from such promotion.

(c) Subsections (d) and (e) of Section 11 do not apply to violations of this section.

(d) Except as provided in Section 11(d)(8), nothing in this section may be construed to limit or prevent any action that may be taken under this act with respect to any violation of any other section of this act.

#### SECTION 11.

(a) This act shall be enforced by the authority as if the violation of this act were an unfair or deceptive act or practice proscribed under title 47, chapter 18, part 1.

(b) The authority shall prevent any person from violating this act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of title 65, parts 1 and 2, were incorporated into and made a part of this act.

(c) Notwithstanding any other provision of this act, in any proceeding or action pursuant to this section to enforce compliance, through an order to cease and desist or an injunction, with Section 9(a)(3), Section 9(b), Section 9(d)(1)(B), (C), or (D), Section 9(f)(1), or Section 9(h), the authority shall be required to allege or prove the state of mind required by such subsection or subdivision.

(d)

(1) In any case in which the attorney general and reporter, or an official or agency of the state, has reason to believe that an interest of the residents of the state has been or is threatened or adversely affected by any person who violates

Section 9(a), (b), or (i), or who engages in a pattern or practice that violates Section 9(c), (d), or (e) the attorney general, official, or agency of the state, as parens patriae, may bring a civil action on behalf of the residents of the state in a circuit court of the state with appropriate jurisdiction:

(A) To enjoin further violation of Section 9 by the defendant; or

(B) To obtain damages on behalf of residents of the state, in an amount equal to the greater of:

(i) The actual monetary loss suffered by such residents; or

(ii) The amount determined under subdivision (3).

(2) Notwithstanding any other provision of this act, in a civil action under subdivision (1)(A), the attorney general, official, or agency of the state shall not be required to allege or prove the state of mind required by Section 9(a)(3), Section 9(b), Section 9(d)(1)(B), (C), or (D), Section 9(f)(1), or Section 9(h).

(3)

(A) For purposes of subdivision (1)(B)(ii), the amount determined under this subdivision is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to two hundred fifty dollars (\$250).

(B) For any violation of Section 9 (other than Section 9(a)), the amount determined under subdivision (3)(A) may not exceed two million dollars (\$2,000,000).

(C) The court may increase a damage award to an amount equal to not more than three (3) times the amount otherwise available under this subdivision if:

(i) The court determines that the defendant committed the violation willfully and knowingly; or

(ii) The defendant's unlawful activity included one (1) or more of the aggravating violations set forth in Section 9(f), (g), or (h).

(D) In assessing damages under subdivision (3)(A), the court may consider whether:

(i) The defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) The violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in subdivision (i).

(4) In the case of any successful action under subdivision (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the state.

(5) The state shall serve prior written notice of any action under subdivision (1) upon the authority and provide the authority with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the state shall serve such notice immediately upon instituting such action.

The authority shall have the right:

(A) To intervene in the action;

(B) Upon so intervening, to be heard on all matters arising therein;

(C) To remove the action to the appropriate court; and

(D) To file petitions for appeal.

(6) For purposes of bringing any civil action under subdivision (1), nothing in this act shall be construed to prevent the attorney general and reporter from exercising the powers conferred on the attorney general by the laws of this state to:

(A) Conduct investigations;

(B) Administer oaths or affirmations; or



(C) Compel the attendance of witnesses or the production of documentary and other evidence.

(7) In an action brought under subdivision (1), process may be served in any place in which the defendant:

(A) Is an inhabitant; or

(B) Maintains a physical place of business.

(8) If the authority has instituted a civil action or an administrative action for violation of this act, neither the attorney general, nor any other official or agency of the state, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the authority for any violation of this act alleged in the complaint.

(9) Except as provided in Section 9(a)(3), Section 9(b), Section 9(d)(1)(B), (C), or (D), Section 9(f)(1), or Section 9(h), in a civil action brought by the attorney general, or an official or agency of the state, to recover monetary damages for a violation of this act, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

(e)

(1) A provider of Internet access service adversely affected by a violation of Section 9(a), (f), (g), (h), or (i), or a pattern or practice that violates Section 9(b), (c), (d), or (e), may bring a civil action in any circuit court of the state with jurisdiction over the defendant:

(A) To enjoin further violation by the defendant; or

(B) To recover damages in an amount equal to the greater of:

(i) Actual monetary loss incurred by the provider of Internet access service as a result of such violation; or

(ii) The amount determined under subdivision (e)(3).

(2) In any action brought under subdivision (1), this act shall be applied as if the definition of the term "procure" in Section 7(12) contained, after "behalf" the words "with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this act".

(3)

(A) For purposes of subdivision (1)(B)(ii), the amount determined under this subdivision is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of Section 9(f)(1) treated as a separate violation) by:

(i) Up to one hundred dollars (\$100), in the case of a violation of Section 9(a); or

(ii) Up to twenty-five dollars (\$25.00), in the case of any other violation of Section 9.

(B) For any violation of Section 9 (other than section 9(a)), the amount determined under subdivision (A) may not exceed one million dollars (\$1,000,000).

(C) The court may increase a damage award to an amount equal to not more than three (3) times the amount otherwise available under subdivision (e)(3) if:

(i) The court determines that the defendant committed the violation willfully and knowingly; or

(ii) The defendant's unlawful activity included one (1) or more of the aggravated violations set forth in Section 9(f), (g), or (h).

(D) In assessing damages under subdivision (3)(A), the court may consider whether:

(i) The defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or

(ii) The violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in subdivision (i).

(4) In any action brought pursuant to subdivision (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

## SECTION 12.

(a) Not later than six (6) months after the effective date of this act, the authority shall transmit to the commerce, labor and agriculture committee of the senate and the commerce committee of the house of representatives a report that:

(1) Sets forth a plan and timetable for establishing a statewide marketing Do-Not-E-Mail registry;

(2) Includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the authority has regarding such a registry; and

(3) Includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) The authority may establish and implement the plan, but not earlier than nine (9) months after the effective date of this act.

## SECTION 13.

(a) Not later than twenty-four (24) months after the effective date of this act, the authority, in consultation with the attorney general and reporter and other appropriate agencies, shall submit a report to the general assembly that provides a detailed analysis

of the effectiveness and enforcement of the provisions of this act and the need, if any, for the general assembly to modify such provisions.

(b) The authority shall include in the report required by subsection (a):

(1) An analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this act;

(2) Analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the state could pursue through international negotiations, fora, organizations, or institutions; and

(3) Analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

SECTION 14. The authority shall transmit to the commerce, labor, and agriculture committee of the senate and the commerce committee of the house of representatives:

(1) A report, within nine (9) months after the effective date of this act, that sets forth a system for rewarding those who supply information about violations of this act, including:

(A) Procedures for the authority to grant a reward of not less than twenty percent (20%) of the total civil penalty collected for a violation of this act to the first person that:

(i) Identifies the person in violation of this act; and

(ii) Supplies information that leads to the successful collection of a civil penalty by the authority; and

(B) Procedures to minimize the burden of submitting a complaint to the authority concerning violations of this act, including procedures to allow the electronic submission of complaints to the authority; and

(2) A report, within eighteen (18) months after the effective date of this act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line by the use of the characters "ADV" in the subject line or other comparable identifier, or an explanation of any concerns the authority has that cause the authority to recommend against the plan.

SECTION 15. The Tennessee regulatory authority is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect July 1, 2004, the public welfare requiring it